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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

NO. 319

FIDELITY ASSURANCE ASSOCIATION, A Corporation,  
Debtor, and CENTRAL TRUST COMPANY, Trustee for  
Fidelity Assurance Association,

*Petitioners,*

vs.

EDGAR B. SIMS, Auditor of the State of West Virginia, and  
Ex Officio Insurance Commissioner of the State of West  
Virginia; ROSS B. THOMAS and H. ISAAH SMITH, West  
Virginia State Court Receivers, et al.,

*Respondents.*

**JOINT AMICI CURIAE BRIEF**

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## INDEX.

Argument .....	4-11
Authorities (adopted by reference) .....	8-9
Conclusions .....	11
Controverted questions .....	9-10
Exhibit "A" .....	14
Exhibit "B" .....	14
Opinion of Circuit Court of Appeals (reference) ..	11
Reasons for filing this brief .....	6
Statement of facts .....	1-6







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*Respondents.*

**JOINT AMICI CURIAE BRIEF ON BEHALF OF THE  
STATES AND STATE OFFICIALS OF ILLINOIS,  
ALABAMA, DELAWARE, KANSAS, KENTUCKY,  
INDIANA, OHIO, NEW YORK, TEXAS, NORTH  
DAKOTA, CALIFORNIA, LOUISIANA, NE-  
BRASKA, OREGON, WASHINGTON, UTAH, AND  
THE STATE COURT RECEIVER OF VIRGINIA.**

**STATE OF THE CASE.**

The opinions below, jurisdiction, and statutes involved, are fully set forth in the briefs of the parties to the case.

Fidelity Assurance Association, formerly Fidelity Investment Association, a West Virginia corporation, was licensed to do business in the States of Alabama, Delaware, Kansas, Kentucky, Illinois, Indiana, Ohio, and Virginia, as well as other States in the United States. Each of the above named States, by their laws, required



that Fidelity make a deposit in that State as a prerequisite to obtaining a license to do business therein, such deposit to be for the benefit of, and the protection of, the contract holders in each such State. Such deposits were made as required by law. In some of these States the deposit was required by the State authorities to be in the form of a trust indenture, with the deposit to be made with a named trustee in the State, usually a bank, and the contract purchasers were the named beneficiaries. In the other States the deposit was made directly with State officials, and is at present held by them as trustees for the benefit of their residents, as required by statute.

As shown by the evidence, the list given below, in Exhibit A attached hereto and made a part hereof, gives the number of contract holders in each of these States, the amount of the deposit made by Fidelity in each of these States and now held therein and the net cash and net reserve liability to contract holders. These States are not respondents in the instant proceedings, but are vitally interested therein, as the sovereign rights of their States and the financial rights and interests of their citizens are directly involved, and they will be bound by the decision of this Court in this case.

The States of California, Louisiana, Nebraska, New York, North Dakota, Oregon, Texas, Washington, and



Utah are not respondents in the case, do not have a deposit of Fidelity, but, as shown in Exhibited B attached hereto and made a part hereof, a number of their residents and citizens in each of those States hold a Fidelity contract with the net cash liability to the contract holders shown.

Each of these last mentioned States has depository laws requiring companies such as was Fidelity, insurance companies, and other foreign corporations of a similar nature, to make a deposit in their State as a prerequisite to obtaining a license to do business therein, for the benefit and protection of their contract holders. Each of said States at the present time has a very substantial deposit from another company which did and does a business very similar to that in which Fidelity was engaged. The deposits of such company are held as a trust fund for the benefit of the contract holders in each of these States.



## ARGUMENT.

Each of the above States holding a deposit of Fidelity desires to liquidate that deposit and distribute the proceeds thereof to the contract holders of their respective States lawfully entitled thereto, as determined by an interpretation of the depository laws of their States, by their own respective State Courts in proceedings instituted in compliance with the laws of their respective States.

The said depository States understand that if their deposit is insufficient to pay their contract holders 100%, there are assets on deposit in West Virginia to which their contract holders may look for further reimbursement.

The above named States who do not hold a deposit of Fidelity are advised that the State of West Virginia, under its laws, required a deposit to be made therein for the protection of the contract holders in their States wherein no deposit was required of Fidelity, and are further advised that the contract holders of their States have received proofs of claim from the officials in West Virginia, and that their contract holders have filed their proofs of claim against that fund.



None of the States joining this brief *amici curiae* have made any protest or objection to the actions and proceedings taken by the Attorney General and officials of the State of West Virginia, and these States are willing and satisfied that the proper officials of the State of West Virginia shall proceed in their proper State Court, as they understand is being done, to liquidate the securities held on deposit in West Virginia, and to distribute the proceeds thereof to those judically found rightfully entitled thereto. These States appearing *amicus curiae* respect and believe in the honesty and integrity of the State Courts of West Virginia, the officials thereof, the Attorney General of West Virginia, and the duly elected officers of the State of West Virginia, and have no reason to doubt but that they will carry out their required duties in the premises fairly and ably and without partiality or prejudice, to the best of their abilities, as required by the laws of their State and by the decisions of their State Courts.

These States appearing *amicus curiae* further believe in the honesty and integrity of the Courts, Attorney Generals, and officials of the other States who are respondents in the case at bar, and are fully confident that they also will faithfully and ably and without partiality or prejudice carry out their respective required duties,



and that the officials of all of these States will cooperate to mutually work out their interrelated problems.

**Specific Reasons for the Filing of this Brief.**

Each of the States who are parties to this brief have depository laws applicable to foreign corporations coming into the State to do business, have deposits from many foreign corporations doing various types of business, and are retaining those deposits as trust funds for the protection of the citizens of their States as provided by their respective State laws and the decisions of their State courts thereon.

The Attorney Generals of the respective States who are filing this amici curiae brief understand that the case at bar will determine, among other questions, the question of whether such deposits made in compliance with valid State laws and put in the custody and possession of State officials under those laws can or should be taken from the possession and custody of those officials in the event of insolvency of the depositing company, and be required to be turned over for liquidation to a federal trustee appointed in Chapter X proceedings in bankruptcy; whether the trust lien created by statute or trust indenture in favor of the citizens or residents of such State who have dealt with such corporation can or should be nullified or avoided; whether the depository laws of



each of these respective States, in the event of insolvency, should be interpreted by the State Courts of the State which enacted those laws, or by the Federal Courts sitting in bankruptcy in a foreign jurisdiction in Chapter X proceedings.

These respective Attorney Generals are not unmindful of the fact that in the future Congress may see fit or deem it necessary to include insurance companies within the purview of the Bankruptcy Act, in which event the deposits made in each of these respective States, as well as other States of the Union, would be vitally affected by a determination of these questions in the case at bar.

It is the further understanding of those appearing here now as *amici curiae* that the respondents in the above case, except the Securities and Exchange Commission, adopt and support by their briefs the position that deposits made with States under valid State laws should, in the event of insolvency, remain in the custody and possession of those State officials and be administered and liquidated by them in the State Courts provided by law therefor; that the trust or other liens in favor of the citizens and residents of those States wherein the deposit is made for their benefit cannot and should not be avoided, set aside, or nullified; that interpretations of the depository laws as to which of the respective citizens



and residents of each of the respective States should participate in the deposited assets, are questions of State law; and that those and all other interpretations of the depository laws of each of the States must and should be determined by the respective State Courts wherein such legislation was enacted.

As a determination of these questions and the result of this litigation will involve the sovereign rights of the several States appearing *amici curiae* herein, to require, under their police powers, deposits to be made by foreign corporations coming into the State, for the protection of domestic residents who may do business with such corporations; and will involve the sovereign rights of these States to administer such deposits in the event of insolvency as a part of the internal administration of their State laws; and will involve their sovereign right to have their own State statutes interpreted solely by their own tribunals; and will vitally affect the financial interests of their citizens, therefore, these *amici curiae* States, through their Attorney Generals, adopt and support the above contentions and positions of the respondents in the case at bar, with the exception of the respondent, the Securities and Exchange Commission, and respectfully urge this Court to affirm and sustain the judgment entered below by the United States Circuit Court of Appeals for the Fourth Circuit in these respects.



These States appearing amici curiae particularly urge this Court to uphold and sustain the following propositions, which are more fully set forth and argued in the brief of the several respondents:

1. That Congress in enacting Chapter X of the Bankruptcy Act did not intend that companies doing the kind of business in which Fidelity was engaged were precluded from being liquidated in State Courts under the laws of the respective States;

2. That required deposits of foreign corporations coming into the several States to do business shall not, in the event of insolvency, be taken from the custody, possession, control and administration of the officials of the States with whom such deposits were required to be made;

3. That such required deposits made in accordance with valid State laws for the benefit of the security purchasers and holders in each of the several States are impressed with a trust lien under the several State laws in favor of the security owners and holders, which under no circumstances can be set aside, nullified or avoided;

4. An interpretation of the depository laws of the several States should be made only in the State Courts of the particular States which enacted that legislation, rather than in a Federal Court sitting in bankruptcy;



5. That in the instant case the deposits made with the several States should be liquidated as expeditiously as possible, yet in an orderly manner, so as to obtain the greatest amount possible for the said securities, and distribution of the proceeds thereof should be made promptly following a determination by the Courts of the several States as to those properly entitled thereto under decisions and interpretations of the respective State laws by those State Courts.



## CONCLUSION.

In view of the importance of the decision in this case to the several States of the United States, it is respectfully urged that whatever decision may be made by the Court in the particular circumstances, that it affirm the decision of the Circuit Court of Appeals and the position of the respondents in the particulars set out. An adverse decision to the position herein taken would not only vitally adversely affect the interests of the thousands of persons, residents and citizens of these States, who are personally and financially interested in Fidelity, but would do irreparable harm and injury to these *amici curiae* States, their State laws, and the millions of their citizens who look to these and similar State deposits for the protection of their interests in the many types of financial corporations required to make such deposits.

Respectfully submitted,

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**EXHIBIT A.****Contracts, Liabilities and Deposits of Fidelity Assurance Association with States Filing Brief Amicus Curiae, which Required Deposits from Fidelity.**

	Total Number of Contracts	Net Cash Liability Apr. 10, 1941	Securities Deposited Market Value June 6, 1941	Percentage of Market Value to Cash Liability
Alabama....	172	\$ 31,346.71	\$ 32,555.16	103
Delaware ..	875	290,175.36	293,790.63	101
Illinois ....	12,209	4,225,790.75	3,759,894.60	89
Indiana.....	1,293	386,173.45	162,863.44	42
Kansas ....	405	108,784.89	85,337.50	76
Kentucky ..	662	92,690.42	86,712.50	93
Ohio .....	14,807	2,360,418.70	509,573.44	21
Virginia ...	2,443	557,809.12	27,703.13	5

**EXHIBIT B.****Contracts and Liabilities of Fidelity Assurance Association in States Appearing Amici Curiae who have no Deposit of Fidelity.**

State	Total Number of Contracts	Net Reserve Liability April 10, 1941	Net Cash Liability April 10, 1941
California.....	236	\$174,940.15	\$169,577.35
Louisiana .....	375	42,934.29	40,941.77
Nebraska .....	20	7,882.08	7,661.27
New York.....	1,456	690,448.27	669,824.67
North Dakota..	10	37,394.11	36,487.35
Oregon .....	11	4,323.01	4,137.24
Texas .....	84	39,152.19	37,829.08
Washington ...	41	35,646.49	34,650.60
Utah .....	3	2,020.48	1,944.00